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APR 27 2007

REMARKS

Applicant has amended claims 1 and 3, canceled claims 2 and 4 without prejudice and added new claim 5. Applicant respectfully submits that these amendments to the claims are supported by the application as originally filed and do not contain any new matter (see page 5 of Applicant's application). Accordingly, the Office Action will be discussed in terms of the claims as amended.

The Examiner has rejected claims 1-4 under 35 USC 112, second paragraph. Applicant has canceled claim 4 without prejudice and clearly defined the superoxide scavenging activity of the isoflavone aglycone in claim 1. Accordingly, Applicant respectfully submits that the claims comply with the requirements of 35 USC 112, second paragraph.

The Examiner has rejected claims 1-4 under 35 USC 102 as being anticipated by Takebe et al. '632, stating that it discloses each and every element of Applicant's invention.

In reply thereto, Applicant would like to first point out that in Applicant's invention the isoflavone aglycone is extracted and concentrated using a solvent. As a result, the isoflavone aglycone content is 30 wt% or greater and the diadzein content in the isoflavone aglycone is 70 wt% or greater and requires superoxide scavenging activity.

With the above in mind, Applicant has carefully reviewed Takebe et al. '632 and respectfully submits that Takebe et al. '632 discloses that the material produced therein contains less than 100 mg in 100 g. Accordingly, Applicant respectfully submits that this is less than 0.1 wt% of isoflavone aglycone. Applicant respectfully submits that this is hardly a concentrate. Still further, Applicant respectfully submits that it is substantially less than 30 wt% of Applicant's invention as claimed by claim 3. Also, Applicant respectfully submits that Takebe et al. '632 does not disclose superoxide scavenging activity.

In view of the above, therefore, Applicant respectfully submits that claims 1, 3 and 5 are not anticipated by Takebe et al. '632.

The Examiner has rejected claims 1-4 under 35 USC 102 as being anticipated by Takebe et al. '819.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention. In addition, Applicant respectfully submits that Takebe et al. '819 produces substantially the same amount of isoflavone aglycone as Takebe et al. '632. Therefore, Applicant respectfully submits that Takebe et al. '819 is also not a concentrate and

further does not disclose isoflavone aglycone content of 30 wt% or greater. Also, Applicant respectfully submits that Takebe et al. '819 does not disclose superoxide scavenging activity.

In view of the above, therefore, Applicant respectfully submits that claims 1, 3 and 5 are not anticipated by Takebe et al. '819.

The Examiner has rejected claims 1-4 under 35 USC 102 as being anticipated by Takebe et al. '161.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention. In addition, Applicant respectfully submits that Takebe et al. '161 is substantially the same in content as Takebe et al. '632 and can hardly be called a concentrate and does not disclose an isoflavone aglycone content of 30 wt% or greater. Also, Applicant respectfully submits that Takebe et al. '161 does not disclose superoxide scavenging activity.

In view of the above, therefore, Applicant respectfully submits that claims 1, 3 and 5 are not anticipated by Takebe et al. '161.

The Examiner has rejected claims 1, 2 and 4 under 35 USC 102 as being anticipated by Obata et al.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention and respectfully submits that Obata et al. does not state whether these are volume percentages, weight percentages or molecular percentages. In addition, Applicant respectfully submits that Obata et al. does not disclose a diadzein content of 70 wt% or greater. Also, Applicant respectfully submits that Obata et al. does not disclose superoxide scavenging activity. Accordingly, Applicant respectfully submits that claims 1 and 5 are not anticipated by Obata et al.

The Examiner has rejected claims 1-4 under 35 USC 102 as being anticipated by Kelley et al.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention. In addition, Applicant has carefully reviewed Kelly et al. and respectfully submits that the isoflavone aglycone content is less than 200 mg/100 g. This results in a content of less than 0.2 wt%. Again, Applicant respectfully submits that this is hardly concentrated and does not disclose an isoflavone aglycone content of 30 wt% or greater. Also, Applicant respectfully submits that Kelly et al. does not disclose superoxide scavenging activity.

In view of the above, therefore, Applicant respectfully submits that claims 1, 3 and 5 are not anticipated by Kelly et al.

The Examiner has rejected claims 1-4 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 7 and 9 of USP 5885632; rejected claims 1-4 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claim 7 of USP 6045819; rejected claims 1-4 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-9 of USP 6303161; provisionally rejected claims 1-4 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-7, 9-13 and 15 of copending application 10/070888; provisionally rejected claims 1-4 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-7 of copending application 10/070889; and provisionally rejected claims 1-4 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-2 of copending application 10/507987. In reply thereto, submitted herewith is a terminal disclaimer and Applicant respectfully requests that the Examiner withdraw these double patenting rejections.

Applicant further respectfully and retroactively requests a three month extension of time so as to respond to the Office Action. Please charge Deposit Account No. 11-1445 in the sum of \$1020 as the fee.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.

Respectfully submitted,

KODA & ANDROLIA

By

William E. Ainsworth
Reg. No. 27,177

2029 Century Park East
Suite 1140
Los Angeles, CA 90067-2983
Tel: (310) 277-1391
Fax: (310) 277-4118

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